

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT MISC. CASE 245 OF 1997

EARNEST NGIRICHI MUGAA APPLICANT

VERSUS

ANNA KARIUKI RESPONDENT

RULING

Earnest Ngirichi Mugaa the Applicant herein applies under order XLIV rules 1(1)(a) and order L rule 1 of the civil Procedure Act for review of the order of dismissal made on 21st October 1997. The application is supported by an affidavit sworn by the advocate for the Applicant in which he explains that he arrived in court late after the application was dealt with because his motor vehicle had a puncture. The application is opposed by the Respondent who has filed a replying affidavit.

First and foremost it is evident that the Notice of motion is incompetent as order XLIV Rule 1 (1) (a) and order L rule 1 do not exist in the Civil Procedure Act but in the Civil Procedure Rules. Secondly it is apparent from the court record that the application dated 21st October 1997 was not dismissed for non attendance but was dismissed as it had no merit no proper explanation having been given for the delay in filing the appeal and the delay in prosecuting the application for leave to appeal out of time. No new grounds or sufficient cause has been given to the court as to justify the review or setting aside of the order of dismissal as the presence of the advocate would not have made any difference in view of the reasons given for the dismissal.

Finally there has again been an inordinate delay in filing this application for review and in prosecuting the same and no explanation has been given for this delay.

For all the aforestated reasons the application dated 28th August 2001 is dismissed as being incompetent and lacking merit. Costs to the Respondent.

Dated signed and delivered at Nyeri in open court this 5th day of December 2003.

H. M. OKWENGU

JUDGE